

REMARKS

In the non-final Office Action, the Examiner rejected claim 16 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite; rejected claims 1-20, 22-36, and 38 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter; and rejected claims 21 and 37 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter.

By this Amendment, Applicants amend claims 1, 16-18, 20-22, 24, 35-38 to improve form. Claims 1-38 remain pending. Applicants respectfully traverse the Examiner's rejections under 35 U.S.C. §§ 112 and 101.

REJECTION UNDER 35 U.S.C. § 112

In paragraph 5 of the Office Action, the Examiner rejected claim 16 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention. Applicants respectfully traverse the rejection.

The Examiner alleged that the recitation "when the likelihood of the training data when the model includes the rule is sufficiently greater than when the model does not include the rule" is unclear (Office Action, paragraph 5). Applicants have amended claim 16 to recite "when the likelihood of the training data occurring when the model includes the rule is greater than when the model does not include the rule." Applicants submit that this language is properly supported by the specification at, for example, paragraphs 0044 and 0053, and is clear and definite.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 16 under 35 U.S.C. § 112, second paragraph.

REJECTIONS UNDER 35 U.S.C. § 101

In paragraph 6 of the Office Action, the Examiner rejected claims 1-20, 22-36, and 38 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. The Examiner alleged that independent claims 1, 20, 22, 24, and 38 appear to be directed to an abstract idea rather than a practical application of the idea since no tangible result appears to occur. Applicants respectfully traverse the rejection.

The USPTO specifically states in the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Nov. 22, 2005 O.G. Notice) (hereinafter "Guidelines") the following:

To properly determine whether a claimed invention complies with the statutory invention requirements of 35 U.S.C. 101, USPTO personnel must first identify whether the claim falls within at least one of the four enumerated categories of patentable subject matter recited in section 101 (process, machine, manufacture or composition of matter).

* * *

The burden is on the USPTO to set forth a prima facie case of unpatentability. Therefore if the examiner determines that it is more likely than not that the claimed subject matter falls outside all of the statutory categories, the examiner must provide an explanation. ... If the examiner can establish a prima facie case that a claim does not fall into a statutory category, that does not preclude complete examination of the application for satisfaction of all other conditions of patentability. The examiner must further continue with the statutory subject matter analysis as set forth below.

Despite this clear obligation, the Examiner failed to make a determination of whether claims 1, 20, 22, 24, and 38 fall within one of the four enumerated categories of patentable subject matter recited in Section 101. Applicants respectfully submit that each of independent claims 1, 20, 22, 24, and 38 falls within one of the four enumerated categories of patentable subject matter recited in Section 101.

For example, independent claim 1 (with its dependent claims) is directed to a system for generating a model. The system comprises a plurality of computer nodes. Thus, claim 1 is clearly directed to a "machine," which is one of the four enumerated categories of patentable

subject matter recited in Section 101.

Independent claim 20 is directed to a method for generating a model, where the method is performed substantially concurrently by a plurality of devices. Thus, claim 20 is directed to a "process," which is also one of the four enumerated categories of patentable subject matter recited in Section 101.

Independent claim 22 (with its dependent claim) is directed to a system for generating a model that comprises a repository and a plurality of nodes. Thus, claim 22 is clearly directed to a "machine," which is one of the four enumerated categories of patentable subject matter recited in Section 101.

Independent claim 24 (with its dependent claims) is directed to a method for generating a model in a system that includes a plurality of nodes. Thus, claim 24 is directed to a "process," which is also one of the four enumerated categories of patentable subject matter recited in Section 101.

Independent claim 38 is directed to a system for generating a model that comprises a plurality of nodes. Thus, claim 38 is clearly directed to a "machine," which is one of the four enumerated categories of patentable subject matter recited in Section 101.

In light of the foregoing reasons, Applicants submit that the rejection of claims 1-20, 22-36, and 38 under 35 U.S.C. § 101 is improper.

Furthermore, even assuming, *arguendo*, that claims 1-20, 22-36, and 38 are not directed to one of the four enumerated categories of patentable subject matter recited in 35 U.S.C. § 101, the Guidelines further state:

While abstract ideas, natural phenomena, and laws of nature are not eligible for patenting, methods and products employing abstract ideas, natural phenomena, and laws of nature to perform a real-world function may well be. In evaluating whether a claim meets the

requirements of section 101, the claim must be considered as a whole to determine whether it is for a particular application of an abstract idea, natural phenomenon, or law of nature, rather than for the abstract idea, natural phenomenon, or law of nature itself.

A proper analysis under 35 U.S.C. § 101 entails a determination of whether the claimed invention is a practical application of an abstract idea, law of nature, or natural phenomenon (judicial exceptions to 35 U.S.C. § 101). Independent claims 1, 20, 22, 24, and 38 recite a practical application because they provide a transformation of an article to a different state or thing. The Guidelines state that if a claim provides a transformation or reduction of an article to a different state or thing, then the Examiner shall end the inquiry and find that the claim meets the statutory requirement of Section 101.

For example, independent claim 1 recites that a rule is added to the model, thus transforming the model to a different state or thing. Independent claim 20 recites a method performed substantially concurrently by a plurality of devices that comprises adding the rules to the model, thus transforming the model to a different state or thing. Independent claim 22 recites a system that includes a repository and a plurality of nodes to add the rule to the model, thus transforming the model to a different state or thing. Independent claim 24 recites a method performed in a system that includes a plurality of nodes that comprises adding the rules to the model, thus transforming the model to a different state or thing. Independent claim 38 recites a system that includes a plurality of nodes, where at least one of the nodes adds the rule to the model, thus transforming the model to a different state or thing.

In light of this, Applicants submit that the rejection under 35 U.S.C. § 101 is again improper for claims 1-20, 22-36, and 38.

Even assuming, *arguendo*, that claims 1-20, 22-36, and 38 do not provide a transformation, claims 1-20, 22-36, and 38 provide a practical application that produces a useful,

tangible, and concrete result. According to the Guidelines, in determining whether a claim provides a practical application that produces a useful, tangible, and concrete result, the Examiner should consider and weigh the following factors: (1) the USPTO's official interpretation of the utility requirement provides that the utility of an invention has to be (i) specific, (ii) substantial and (iii) credible; (2) the tangible requirement does not necessarily mean that a claim must either be tied to a particular machine or apparatus or must operate to change articles or materials to a different state or thing; and (3) the process must have a result that can be substantially repeatable or the process must substantially produce the same result again.

Claims 1-20, 22-36, and 38 provide a useful result in that each of the independent claims recites outputting the rule added to the model. Such a result is useful because it ensures that the other nodes can update their copy of the model (see, for example, paragraph 0045). Claims 1-20, 22-36, and 38 produce a tangible result in the form of a model that can be used to classify data. The results of claims 1-20, 22-36, and 38 are also concrete because they may be repeated to generate or update the model.

In light of this, Applicants submit that the Examiner's rejection of claims 1-20, 22-36, and 38 under 35 U.S.C. § 101 is improper for the further reason that claims 1-20, 22-36, and 38 provide a practical application that produces a useful, tangible, and concrete result.

Based upon the foregoing, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claims 1-20, 22-36, and 38 under 35 U.S.C. § 101.

In paragraph 7 of the Office Action, the Examiner rejected claims 21 and 37 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. The Examiner alleged that the means recited in the claims are merely software (Office Action, paragraph 7).

Applicants respectfully submit that claims 21 and 37 are directed to statutory subject matter for at least reasons similar to reasons given with regard to claims 1-20, 22-36, and 38.

Accordingly, Applicants respectfully request the reconsideration and withdrawal of the rejection of claims 21 and 37 under 35 U.S.C. § 101.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully request the Examiner's reconsideration of the application and the timely allowance of pending claims 1-38.

As Applicants' remarks with respect to the Examiner's rejections overcome the rejections, Applicants' silence as to certain assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, etc.) is not a concession by Applicants that such assertions are accurate or that such requirements have been met, and Applicants reserve the right to dispute these assertions/requirements in the future.

If the Examiner does not believe that all pending claims are now in condition for allowance, the Examiner is urged to contact the undersigned to expedite prosecution of this application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

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